

1 the Engagement Letter because, frankly, if it
2 doesn't get paid, it will do what it did, it will
3 sue for breach of contract and get a Judgment --

4 MR. HAIL: I can tell you --

5 THE COURT: -- so, there doesn't seem to
6 me to be -- when I look at what the defined scope
7 is, or essentially arising out of the Engagement
8 Letter, I can understand why you need indemnity
9 from third parties, i.e., you're going to be
10 presenting as an investment banker -- Impact's
11 going to be presenting financial information to
12 third parties provided by Dorado. If that
13 information proves to be false and you get sued by
14 somebody for misrepresentation, other things, you
15 need the protection from Dorado because you're
16 relying upon the accuracy of information they're
17 giving you to peddle it to a third party, but as
18 between the two of you, your rights are just
19 contract rights, and if Dorado breaches, you'll
20 sue them, as you did.

21 MR. HAIL: Well, to the extent if Dorado
22 doesn't pay a fee, for example, as they didn't
23 this case, and the Jury found they didn't, then
24 that is something that we would just do a normal
25 suit on, and then we would try to get a recovery

1 and then we'll deal with that on appeal.

2 THE COURT: Right.

3 MR. HAIL: The whole concept behind this
4 is we're out trying to raise money for a startup
5 company and we don't want to be out of pocket
6 anything for any reason at all unless we are doing
7 something bad, willful, negligence, willful
8 misconduct, bad faith. If we're acting in a bad
9 way, then we shouldn't get recovery, whether it's
10 a third party, or you know, a first-party claim.
11 That's the whole concept that is to provide very
12 broad protection to my clients who are not getting
13 paid anything, except I think there was a nominal
14 \$1,000 fee at the very beginning. They're not
15 getting paid anything on this deal unless over
16 some months or years they're able to successfully
17 raise some money.

18 THE COURT: But that was their contract.

19 MR. HAIL: Oh, sure, no, that's the
20 contract, but in the meantime, they don't want to
21 be out of pocket if there's any dispute with them
22 in Dorado or if there's any dispute with them and
23 a third party, they want full protection, and that
24 full protection is limited only by the language at
25 the end, if they engaged affirmatively in a

1 certain kind of level of conduct, and yes, they
2 should not get that type of protection.

3 So, I think that's the general reason why
4 it would pick up third-party and first-party
5 claims essentially.

6 THE COURT: Well, I mean, I know what the
7 concept is, but the struggle is: Is this language
8 broad enough when at least the significant portion
9 of the indemnity clearly contemplates that the
10 parties were addressing third-party claims?

11 MR. HAIL: Clearly, certainly the back
12 third, or you know, whatever it is, I don't know
13 how to characterize it, but it's clear the back
14 parties is addressing clearly the third-party
15 issue.

16 I think the first part of it, first
17 two-thirds or whatever the amount is, would
18 certainly go to the third parties as well as
19 claims between the claims between Dorado --
20 Impact or Dorado, or Calce or Dorado or Heyn or
21 any other agents or representatives, that type of
22 thing.

23 And, again, the Court's going to have to
24 read the language carefully, and I know you and I
25 could walk through it, but I think it would

1 probably be more effective for you to read
2 carefully yourself in your own time.

3 With regard to the criminal
4 investigation, just to clarify one thing, I don't
5 think Mr. Roberson misspoke but it may not have
6 been 100 percent clear. We're not seeking
7 anything but a liability finding at this point.
8 We're not asking for a, you know, a sum certain
9 amount. That's something that if the Court
10 certainly finds liability, we'll have to prove up.
11 There may be some discovery on the amounts so that
12 we can -- but we would narrow it down, have a
13 much narrower claim.

14 THE COURT: So, -- well, for purposes of
15 Summary Judgment, you're just seeking the
16 liability?

17 MR. HAIL: Exactly, as opposed to the
18 amount. I realize the amount is something that's
19 going to have to be discovered out and dealt with
20 a little bit more carefully.

21 And perhaps if the Court does deal with
22 liability, sometimes that helps gets the parties
23 to just focus on the amount and maybe something
24 get worked out.

25 THE COURT: How is the criminal

1 investigation covered by the indemnity that deals
2 with arising out of the investigation?

3 MR. HAIL: Well, the -- sure, with
4 regard to the Department of Justice, just from the
5 face of the subpoena --

6 THE COURT: Do I have that?

7 MR. HAIL: You do. You do. It's
8 attached to Mr. Schmidt's Affidavit. We didn't
9 object to this portion, but there Item No. 2, says
10 "Produce all documentation containing
11 representations to investors by Don Schmidt, Tim
12 Wafford (phonetically spelled) and/or Dorado
13 Exploration, Inc., so the scope of the
14 investigation or the scope of the documentation
15 --

16 THE COURT: I'm sorry. I'm going to stop
17 you so I can -- it's helpful to me if I can find
18 it. Where in your notebook, Mr. Roberson, would
19 Mr. Schmidt's Affidavit be?

20 MR. ROBERSON: We've got an extra page.

21 THE COURT: All right. That'd be great
22 if you do.

23 MR. HAIL: I was going to pull out the
24 Affidavit, that way --

25 THE COURT: Thank you, Mr. Hail.

1 MR. HAIL: Yes, Your Honor, I believe
2 it's at the last tab.

3 THE COURT: Wonderful. Thank you.

4 MR. HAIL: Thank you. If you look over
5 at Tab 1-B --

6 THE COURT: All right.

7 MR. HAIL: -- there's two things being
8 asked for here. One is just by way of background,
9 Amelia Bowles (phonetically spelled) was the Don
10 Schmidt's and I guess Dorado in a more broad
11 sense, secretary for some period of time.

12 If you saw documents provided to you by
13 Amelia Bowles it's pretty certain she provided
14 certain Dorado corporate documents in that Donald
15 Schmidt, personal financial documents.

16 And then the second thing is produce all
17 documentation containing representations to
18 investors by Mr. Schmidt, Mr. Wafford and/or
19 Dorado Exploration, Inc., investigating potential
20 securities violations in connectin with monies
21 that were being raised contemporaneously with the
22 time that we are raising money -- "we" being
23 Dorado -- excuse me -- Impact is raising money
24 on behalf of Dorado.

25 Actually, what got this entire lawsuit

1 kick started was that the deal was about to close
2 out with Petrobridge (phonetically spelled) back
3 in August of '06 -- I believe August of '06.

4 We had concerns about potential
5 securities violations and reporting those. There
6 was a lawsuit filed really focused primarily on
7 the issue of promise not to divulge confidential
8 information, don't talk to Petrobridge. A hearing
9 was granted. Then we came back in and filed the
10 Motion to Dissolve and had a temporary injunction
11 hearing. And we certainly agreed not to divulge
12 anything confidential, but we got a carve-out for
13 -- or we were allowed to report potential
14 securities violations so we could fulfill our
15 duties under -- what we felt were our duties
16 under various securities law.

17 And that's just by way of a little bit of
18 a backdrop, so there's been an issue, there had
19 been an issue lingering out there for quite some
20 time about the way Dorado had been raising money.

21 Obviously, if we're their financial
22 advisory service provider as it is in the
23 Engagement and we are contemporaneously raising
24 money while there is a Department of Justice
25 investigation into securities violations, it's a

1 pretty serious matter.

2 And so, that's how it would relate to
3 that.

4 THE COURT: When were you first engaged?

5 The date of the Engagement Letter is --

6 MR. HAIL: When was Impact Equity first
7 engaged?

8 THE COURT: Yes, sorry, you as --

9 MR. HAIL: I'd have to look that up. I
10 want to say May of '05.

11 THE COURT: April 18 of '05 is the date
12 of the letter. And when --

13 MR. HAIL: And to go back to one thing,
14 and we'll get to this issue more directly in a
15 moment. You're basically asking were there two
16 agreements at issue here. Yes. There's what
17 everyone has called the Engagement Agreement.

18 THE COURT: Yes.

19 MR. HAIL: And then there was something
20 -- there was another agreement that has been
21 referred to generally throughout the cases, a
22 Confidentiality Agreement.

23 The direct parties on that, it's Piot
24 Capital (phonetically spelled) and Impact Equity,
25 and that Agreement was entered into basically the

1 initial meeting between Mr. Piot and Mr. Calce in
2 which --

3 THE COURT: I don't know who Mr. Piot is.

4 MR. HAIL: For purposes, it doesn't
5 really matter. It was someone that Mr. Calce was
6 doing business with at some point back then.

7 And Mr. Schmidt had them sign a
8 Confidentiality -- prior to providing certain
9 potentially proprietary Dorado documentation about
10 prospects and that type of deal.

11 THE COURT: And when was --

12 MR. HAIL: So there's two different
13 contracts completely.

14 THE COURT: And when was the
15 Confidentiality -- that predates the engagement?

16 MR. HAIL: The confidentiality that
17 Dorado prevailed on at trial court was the --
18 I'm going to call the Piot Confidentiality
19 Agreement.

20 THE COURT: And when was that entered
21 into?

22 MR. HAIL: That was entered into
23 approximately a couple of months prior to the
24 Dorado Engagement essentially.

25 THE COURT: Okay.

1 MR. HAIL: I believe the idea was Piot,
2 Mr. Calce and Mr. Piot were not necessarily
3 interested in investing directly in Dorado, but
4 Mr. Calce was interested in seeing if he could
5 attempt to help raise funds for Dorado and it sits
6 on a contingent-type arrangement.

10 MR. HAIL: Well, that's a good question.
11 I haven't really thought about that. Here --
12 there's two aspects to the Engagement. Well,
13 really, there's a primary term, and I don't recall
14 the precise number of months, I want to say six
15 months, but that would be an engagement. There's
16 a primary term in which we are to identify funding
17 sources, that type of deal.

18 And then there's a tail provision which
19 goes on I believe for 18 months on really very
20 similar to trying to sell your house with Ebby
21 Halliday --

22 | THE COURT: Right, so that if --

23 MR. HAIL: -- four or five buyers come
24 in, one of them comes along six months after that,
25 the engagement ends, you're still going to get

1 paid your deal.

2 THE COURT: Your commission.

3 MR. HAIL: A brand new person comes
4 along, probably not.

5 THE COURT: All right.

6 MR. HAIL: So, I guess really, it would
7 be, if I remember from the time frames correctly,
8 it would be two years from the date of engagement
9 which I believe you said was April 18. So, that
10 would be the ending of any possible -- and then
11 the -- yeah, I think that would be right, so
12 about two years.

13 With regard to the Panola County issue

14 --

15 THE COURT: Okay. So, just so I'm clear,
16 so by the time the Grand Jury subpoena that we've
17 just looked at is dated -- was issued December
18 14th, '07 --

19 MR. HAIL: Yes, it was after --

20 THE COURT: -- So, in all likelihood, the
21 Agreement had lapsed by that point in time?

22 MR. HAIL: Yes. The Agreement -- I
23 believe -- I'd have to go back --

24 THE COURT: And I'm not holding you to
25 the 18th.

1 MR. HAIL: I believe that would be right.
2 Yeah, the Agreement had lapsed, we were after the
3 trial, and various investors in Dorado which you
4 dealt with these people, had complaints and issues
5 with Dorado, and they were looking in -- the
6 Justice Department was looking into potential
7 securities violations in that regard.

8 Obviously, it was the idea is, it was
9 looking back in the past --

10 THE COURT: Of course.

19 THE COURT: And do you know -- and if
20 you cannot tell me, that's fine, too. Do you know
21 the status of this investigation?

22 MR. HAIL: I do not.

23 THE COURT: I take it your clients
24 participated -- I mean, they responded to the
25 subpoena, and again, don't tell me anything you

1 aren't suppose to tell me, but I take it your
2 clients responded to the subpoena.

3 MR. HAIL: We responded appropriately.
4 I'm not aware of any privilege from my dealings
5 with them, and need be, I'll get on the Stand and
6 we'll talk about my dealings with them, but we
7 appropriately responded to subpoena. We have not
8 been subpoenaed for any further information, and
9 so I don't know --

10 THE COURT: Fair enough.

11 MR. HAIL: -- I don't where it's at
12 beyond that, I can't tell you anything further.

13 THE COURT: All right.

14 MR. HAIL: With regard, if you flip over
15 to Tab C, Tab C's Panola -- actually, if you go
16 to Tab B, this is the Grand Jury Summons for
17 Panola County from Criminal District Attorney
18 Davidson. It looks like it was issued -- we were
19 subpoenaed to appear October 25th -- "we" being
20 Mr. Calce and Mr. Heyn --

21 THE COURT: Understood.

22 MR. HAIL: -- October 25th, 2007 which
23 was about two weeks before trial, and what was
24 asked for in the subpoena, and this is extremely
25 broad, I could just paraphrase that. Our entire

1 litigation file, I mean literally our entire file.
2 I believe we had about 20 boxes of documents. The
3 only thing that was carved out, I think I was able
4 to carve out attorneys' notes, or you know, a few
5 little direct attorney/client communication just
6 to make sure we didn't have any waiver of that,
7 and that was acceptable, but essentially 20 boxes
8 of documents were loaded up into an SUV and taken
9 down to Panola County for testimony. Obviously,
10 precisely what is sent to the Grand Jury is
11 secret, and you know, you're not asking for that
12 --

13 THE COURT: Of course.

14 MR. HAIL: -- that and we can't get into
15 that, but what you can find from the record if you
16 flip on over Tab No. C, this is the warning to
17 Mr. Schmidt investigating for the offense of
18 conspiracy to commit theft of service, theft of
19 fiduciary funds, and theft. In my general
20 understanding to put a little more meat on the
21 bones, Mr. -- there was concerns that even after
22 they knew Petrobridge was cutting off their
23 funding, Mr. Schmidt continued to make
24 representations, continued to do drilling
25 operations and that type of deal when there was no

1 money there and there wasn't going to be money
2 there.

3 The monies that were the way our clients
4 would relate to that, at least in part, is
5 obviously we put together -- we were the
6 financial advisor, and we were the ones that put
7 together the Petrobridge deal, intimately involved
8 in it in knowledge of its details and the funding.
9 There was an initial tronch (sic) of funding --

10 MR. ROBERSON: Your Honor, I hesitate to
11 rise to object, but we are so far outside the
12 evidence that's been presented by Mr. Hail in his
13 Response to our Motion. I know the Court is
14 inquisitive of what's happened but we're now
15 talking about evidence that's absolutely not
16 before the Court, and I would object.

17 MR. HAIL: I'm just trying to give you
18 some background from that standpoint. I know
19 you'll take whatever is appropriate. But anyway,
20 what is certainly in dispute we were certainly
21 involved intimately in raising the money and that
22 type of deal, and the funding conditions at
23 Petrobridge that would have to fund or what would
24 have to occur, not occur, certainly there were
25 certain conditions that went into effect for a

1 subsequent troches.

2 And, so, clearly, if Mr. Schmidt is
3 allegedly committing theft or breaching a
4 fiduciary duty or whatever else misrepresenting
5 the funding that's going to come in from
6 Petrobridge facility, that we were the one that
7 put together, I believe that directly relates to
8 the scope of our engagement, so that's just in a
9 nutshell in that regard.

10 THE COURT: All right.

11 MR. HAIL: With regard to -- just a
12 couple of points with regard to the criminal
13 liability on it.. Clearly, there is no question,
14 And I don't believe Mr. Roberson even alluded to
15 that, there's no question that those two issues
16 were not dealt with at the trial, couldn't have
17 been dealt with at the trial, I mean the --

18 THE COURT: The criminal investigations.

19 MR. HAIL: The criminal investigations.
20 The FBI or the Department of Justice issue came up
21 weeks after the trial was over. The Panola County
22 issue came up just right on the Eve of trial,
23 certainly not something that we could have
24 properly presented to the Court in any way shape
25 or form. We were well past any kind of argument

1 deadline to go forward in that regard, to do
2 discovery, to do that type of deal, so it's not
3 something that was dealt with before the Court, so
4 there's no res judicata issue, wouldn't be a
5 compulsory counterclaim or anything that would
6 limit it from that standpoint like some other
7 categories may very well.

8 In fact, and this is just for the record,
9 this is beyond the scope of the record, but if we
10 do go to trial, I'll have Motion in Limine where
11 Dorado specifically asked for exclusion of
12 mentioning the Panola County proceedings at the
13 trial and the Court granted it. I mean, this went
14 -- and that was fine because, you know, the whole
15 idea, and I think in fairness to them, if we're
16 going, "Hey, they're bad guys, they're getting
17 investigated by a Grand Jury," that could taint
18 the Jury's decision, so I think the Court made an
19 appropriate decision in that regard.

20 With regard to the unrecoverable State
21 Court fees issue, as Your Honor knows from the
22 record, I believe I testified to total fees
23 incurred, and then I did under Bucca (phonetic
24 spelling) and other requirements, segregate it
25 down to just solely 38.01 breach of contract,

1 period, not defense of other issues or claims for
2 other nonrecoverable, just clearly segregated it
3 down to that. And if I recall correctly, I
4 believe I testified as 375 and the Jury may have
5 cut it to 275, for whatever reason. My opposing
6 comrade I think testified to 375 and they cut it
7 to a 100, so not exactly sure of the rhyme or
8 reason, but I was happy they cut mine less. We're
9 not complaining about the dealt on that by any
10 means.

11 And I think we properly segregated out,
12 so we believe that is recoverable, and the
13 question then comes down to what you were talking
14 about Mr. Roberson is, is there a finding of bad
15 faith or willful misconduct.

16 THE COURT: Well, but help me -- I'm a
17 little confused by the numbers. So, if we could
18 look at the attachments to your Proof of Claim.

19 MR. HAIL: Yes. Okay. I believe, Your
20 Honor -- my co-counsel's going to find it. I
21 believe it would be the approximately 734 minus
22 the 275 is it.

23 THE COURT: All right. So, but let me
24 just so the record's clear, if you could get that
25 just so for all of us.

1 MR. HAIL: It looks like it's --

2 THE COURT: If we walked through the
3 Attachment to your Amended Proof of Claim, you are
4 no longer seeking an allowance from this Court for
5 Items 1, 2, 3, 4 -- 1, 2, 3 and 4.

6 MR. HAIL: If I could have Mr. Spector
7 come up. He put together this Chart, so I'm going
8 to double check. You said 1 through 4?

9 THE COURT: Correct.

10 MR. HAIL: That is correct. Okay. All
11 right. And what's your next questions then?

12 THE COURT: And then, as I understand it,
13 the attorneys' fees you incurred during the State
14 Court litigation for which you would ask for
15 indemnity would be the 735,862.72 minus the 275
16 allowed by the Jury?

17 MR. HAIL: Yes. Yes, Your Honor.

18 THE COURT: You also seek indemnity for
19 6, 7, 8, 9, 10, 11, 12 which are --

20 MR. HAIL: That's the Dorado Judgment
21 against --

22 THE COURT: Right, that's Dorado's
23 Judgment against Impact, et al.

24 MR. HAIL: -- Impact, et al.

25 THE COURT: 13, you are withdrawing from

1 the Proof of Claim?

2 MR. HAIL: Yes, for the same reasons as
3 Item 1 through 4.

4 THE COURT: Correct. And then 14 and 15

5 --

6 MR. HAIL: Yes.

7 THE COURT: -- are being withdrawn
8 because it's part of the State Court process and
9 you'll deal with that --

10 MR. HAIL: We'll deal with that in the
11 State Court level, yes, Your Honor.

12 THE COURT: Now, Number 16, what is that?

13 MR. HAIL: That would be -- Number 16
14 would be the -- maybe let Mr. Spector.

15 MR. SPECTOR: I believe that those are
16 the amounts that Impact sought but was not awarded
17 at trial.

18 THE COURT: Are you seeking those here,
19 or not?

20 MR. SPECTOR: those are subject to the
21 appeal.

22 MR. HAIL: Based upon the reasoning that
23 we're listing this, no, for purposes of the
24 subject, we'll deal with that at the State Court
25 level.

1 THE COURT: All right. So, to recap: 1,
2 2, 3, 4, 13, 14, 15 and 16 are withdrawn from the
3 Proof of Claim being asserted here?

4 MR. HAIL: Yes, Your Honor.

5 THE COURT: And 5 is being amended to
6 reflect a credit of \$275,000?

7 MR. HAIL: Yes, we did, we referenced,
8 subject to reductions, for amounts paid, but, yes.

9 THE COURT: Okay.

10 MR. HAIL: I mean, it references Item No.
11 3, yes, just put a number, Judge.

12 THE COURT: All right. 12 is post-
13 judgment interest on the award the Debtor got
14 against Impact?

15 MR. HAIL: Yes.

16 THE COURT: 17 is the postpetition I
17 assume cost of collection here?

18 MR. SPECTOR: Correct, and that's the
19 cost of collection of the whole process. You
20 know, it's attributable to cost of collection of
21 the Judgment, it's attributable to cost of
22 collection of fees that were owed in the Panola
23 County litigation. There's no way that I can say
24 that, you know, I spent two-fifths of my time
25 working on the portion of this exhibit that

1 relates to the Judgment and three-fifths to Panola
2 County. I wouldn't know how to do that.

3 THE COURT: Well, you didn't keep time
4 that way.

5 MR. SPECTOR: Correct.

6 THE COURT: I mean, in theory, it could
7 have been allocated, but you chose not to?

8 MR. SPECTOR: I really don't know how I
9 could have allocated it that precisely. I mean,
10 trying to dissect -- trying to -- for example,
11 trying to segregate the fees from the Judgment as
12 opposed to Panola County, the bills, the process
13 of separating Panola County bills from non-Panola
14 County bills, I don't know whether you bill that
15 to Panola County or not.

16 THE COURT: Well, but you could -- I
17 mean, the time could be allocated. It's like in
18 any bankruptcy case where you've got multiple
19 debtors and time is allocated from one to the
20 other based upon an estimate of --

21 MR. SPECTOR: But I don't know how you'd
22 allocate in that particular example because you're
23 separating two things. Are you billing pro rata
24 based upon the amounts that you're separating, or
25 are you billing --

1 THE COURT: Well, but again, those are
2 certainly issues, but it can be done. It's done
3 every day in bankruptcy court.

4 MR. SPECTOR: Yeah, I think it would have
5 been much harder to quantify time on Panola County
6 costs or Panola County collections. I mean, when
7 I was here arguing about confirmation, I didn't
8 argue that we were unimpaired with respect to the
9 Panola County Judgment.

10 THE COURT: No, but it could be
11 allocated, Mr. Spector. I mean --

12 MR. SPECTOR: It could be allocated,
13 sure, and it could still be allocated that way
14 based upon dollar amounts I guess.

15 THE COURT: Right.

16 MR. SPECTOR: It just can't be allocated
17 in time blocks.

18 THE COURT: Understood. Understood.

19 MR. SPECTOR: Yeah, that's all I'm
20 saying.

21 THE COURT: Yeah. And then postpetition
22 interest until paid, what is 18, and Mr. Spector,
23 you may need to stay up here.

24 MR. HAIL: Yeah.

25 THE COURT: Is on that your Judgment

1 against the Debtor?

2 MR. SPECTOR: Yes, it's postpetition
3 interest.

4 THE COURT: On Impact's Judgment against
5 the Debtor? So, I take it that's withdrawn as
6 well, or not?

7 MR. SPECTOR: No, because there could be
8 postpetition interest on the amounts that are
9 subject to indemnity for Panola County, even under
10 the Debtor's model, what remains. Even if you
11 assume that the Debtor --

12 THE COURT: Well, but the portion --
13 some amount of this presumably is postpetition
14 interest on the Judgment.

15 MR. SPECTOR: Yes, some portion of it is
16 withdrawn, I agree.

17 THE COURT: Okay. So, a portion is
18 withdrawn on the Judgment?

19 MR. SPECTOR: Yes.

20 THE COURT: And the portion remaining
21 would be whatever amount of claim is allowed to --

22 MR. SPECTOR: Go forward in this case.

23 THE COURT: -- go forward in this case,
24 you want postpetition interest on that amount
25 since you were to be unimpaired under the Plan?

1 MR. SPECTOR: That's correct, because
2 they've superceded postpetition interest -- I
3 mean, the supersedeas bond has a calculation of
4 postpetition interest in it.

5 THE COURT: Correct, for the Judgment.

6 MR. SPECTOR: For the Judgment.

7 THE COURT: And so, what's remaining of
8 18 here is postpetition interest on any allowed
9 claim in the bankruptcy case?

10 MR. SPECTOR: Correct.

11 THE COURT: And then 19 is withdrawn
12 presumably because the common stock has been
13 deposited, as I understand it?

14 MR. HAIL: Now it has. There was
15 shortage. There was a shortage that we dealt with
16 at the trial court.

17 THE COURT: All right, but at this point
18 --

19 MR. HALE: At this point it appears that
20 yes, at this point it appears that they've
21 delivered requisite number of shares.

22 THE COURT: All right. So, 19 is no
23 longer an issue. All right. All right. So, what
24 we're dealing with for purposes of the claim
25 objection process here, whether it be trial or

1 Summary Judgment is 5 to the extent of \$475,000 or
2 whatever the math is, the Judgment amounts awarded
3 to Dorado against Impact, et al, postpetition fees
4 incurred in connection with this bankruptcy case
5 by the Impact claimants, postpetition interest on
6 any allowed claim in the bankruptcy case, and the
7 Panola County fees incurred by Mr. Heyn and Calce.

8 MR. HAIL: Yes, and fees, the Panola
9 County and the Department of Justice, fees and
10 costs. There was some substantial costs.

11 THE COURT: Right. 20 and 21 says "this
12 amount may be augmented for collection costs."
13 Got it.

14 All right. So, I think I'm clear now.
15 Mr. Roberson, is that helpful?

16 MR. ROBERSON: It is helpful. I have
17 some observations, though, Your Honor, I'd like to
18 make when Mr. Hail's done.

19 THE COURT: All right. Let's -- while
20 we're talking about the criminal investigations
21 --

22 MR. HAIL: Yes.

23 THE COURT: -- help me understand why
24 Mr. Roberson's argument is not correct with
25 respect to claims 20 and 21 from the spreadsheet

1 to the extent that Exhibit B to the Proofs of
2 Claim said that those amounts were submitted at
3 trial?

4 MR. HAIL: The Panola and the -- well,
5 first of all, on the Department of Justice --

6 THE COURT: I'm not -- I'm looking now
7 at your Proof of Claim, or Mr. Spector's exhibit,
8 spreadsheet that says, "\$5,610.72 an 28,130.58,"
9 and then when I look at Exhibit B to the Proof of
10 Claim where those amounts are derived from it says
11 that 21,354.28 of the 28 and change was submitted
12 at trial and 5,000 of the 5610.72 was submitted at
13 trial.

14 MR. HAIL: Yes, that would be right.
15 Those were -- just so you know what they were --
16 within the contract itself, not the indemnity,
17 there was a reimbursement of expense, I think it
18 was title expenses, but airline tickets, hotel
19 rooms, flying around trying to, you know, raise
20 money, those types of deals. Those were
21 submitted, and there was a finding for those
22 issues, so there was finding --

23 THE COURT: There was a finding?

24 MR. HAIL: There was a finding of \$26,000
25 until we get to the -- we get to the 776 by the

1 cash necessity of 750, add the 26,000 for the
2 reasonable out-of-pocket fees, expenses and costs
3 incurred in connection with performing our
4 activities.

5 THE COURT: So, the 776 includes --

6 MR. HAIL: It does include that 26, yes.

7 THE COURT: Then the claim should be
8 reduced by that amount?

9 MR. HAIL: Yes, it should based upon what
10 we've been talking about.

11 THE COURT: Okay. So, you agree that at
12 this point Item 20 should be \$610.72 -- I need a
13 calculator.

14 MR. HAIL: Your Honor, I'll --

15 THE COURT: Do you have a calculator?

16 MR. HAIL: 6,776.30 is the sum.

17 THE court: That's what I get too. So,
18 you agree that -- do you agree that the amount of
19 the claim that you're asserting under
20 Mr. Spector's cheat sheet Item 20 is \$610.72, plus
21 costs, and 21 is 6,776.30 plus costs?

22 MR. HAIL: I haven't run the math, but
23 that sounds approximately correct.

24 THE COURT: All right. And for purposes
25 of your cross-motion for Summary Judgment with

1 respect to the criminal investigation category,
2 you're seeking only a Summary Judgment that that
3 would be within the scope of the indemnity
4 provision and you would expect to prove up at
5 trial the amount?

6 MR. HAIL: Yes, Your Honor. May I
7 proceed?

8 THE COURT: All right. Please.

9 MR. HAIL: Any other questions about the
10 criminal before we move off that? You understand?

11 THE COURT: I think I've got it.

12 MR. HAIL: Any of the timing of
13 everything?

14 THE COURT: I think I've got it.

15 MR. HAIL: And I think we were -- I was
16 just about to get to the unrecovered State Court
17 fee category.

18 THE COURT: Please.

19 MR. HAIL: One of the first issues is,
20 does it fall within this carve-out? Is there an
21 affirmative finding of bad faith, willful
22 misconduct or gross negligence is the exact word,
23 and I believe the language has to be an actual
24 finding made by the Jury.

25 There's no dispute, no question at all,

1 you have the Jury Charge, there is no such
2 finding.

3 Now, what --

4 THE COURT: Well, it's arguably implicit
5 in a couple of findings.

6 MR. HAIL: It arguably could be implicit.
7 There's three different ways, and you're right,
8 we'll never know -- I mean, I got my own idea
9 because sometimes it's actually a disadvantage to
10 be at the trial so I kind of know really what it
11 was. It was really under the contract, but you
12 know, for purposes of the record, we don't know
13 which one of the three. There's no way you could
14 say there was an affirmative finding of bad faith
15 when the Jury could have gone under any one of the
16 three, didn't have to find all three in order to
17 get to that, so there's no way --

18 THE COURT: I hear you.

19 MR. HAIL: -- there's a disconnect
20 there. Theoretically, there could be a
21 connection, but even with that, if you look at the
22 Chart, it's -- all you're doing here -- let me
23 see here. That's question No. --

24 THE COURT: 4, I think.

25 MR. HAIL: Question No. 4. What's being

1 asked is: Did Dorado misappropriate -- excuse me
2 -- Did anyone misappropriate Dorado's trade
3 secrets. Item A, you have to show there is a
4 trade secret. I don't think there's -- that's
5 irrelevant for our purposes today.

6 On 2, it was acquired through the
7 confidential relationship. That implicates that
8 good faith thing that we were looking down below.

9 THE COURT: Correct.

10 MR. HALE: So, that the Jury could find
11 any one of those three in order to meet Element
12 No. 2.

13 THE COURT: I agree.

14 MR. HALE: And then Item 3 is
15 unauthorized use of trade secret. The -- and I
16 believe -- we talked about and I believe we put in
17 the record the Texas Liability Act. This was an
18 issue at post-trial because they were -- in order
19 to pave way for attorneys' fees, they were
20 attempting to argue under trial amendment for a
21 Texas Theft Liability finding, they were arguing
22 -- well, basically, the Jury's already found the
23 intentional conduct necessary for this, and the
24 Court denied --

25 THE COURT: Understood.

1 MR. HALE: -- that because it did not
2 have the mental state required the intentional
3 tort was -- this Jury's finding does not support
4 intentional tort finding, so the Court, among
5 other reasons --

6 THE COURT: So, I take it you think
7 misappropriate -- I'm sorry, I cut you off.

8 MR. HALE: Misappropriation is not
9 misappropriation of trade secrets is not an
10 intentional tort, it does not have the requisite
11 mental state, for example, to support a Texas
12 Theft Liability Act.

13 THE COURT: Well, it may not support that
14 one, but do you have case law that says that theft
15 -- misappropriation of trade secrets is not an
16 intentional tort?

17 MR. HALE: I don't think I have it in
18 those terms. We may need to look and see because
19 that's the term -- that's the way you phrased it
20 and --

21 THE COURT: Well, and I argue with me.
22 I'm just -- willful misconduct suggest to me that
23 we need an intentional tort.

24 MR. HALE: Well, the thing is you could
25 -- we just got to look at what the Jury --

1 clearly, if there was a finding of a, you know,
2 higher level mental state, there's no way that
3 wouldn't be -- you know, Item No. 4, not only is
4 it an unauthorized use but it's willfully done.

5 THE COURT: Well, it is truly a question.
6 I don't know the answer to the question.

7 MR. HAIL: Or it was done with some
8 degree of malice, or you know, intent to harm or
9 whatever it may be. I don't believe --

10 THE COURT: So, what do you think
11 misappropriation of trade secret is?

12 MR. HALE: I don't believe it has a
13 mental state. I really honestly don't. I said,
14 it's been a year and a half since we were really,
15 really digging into the case law on this because
16 there was a lot of argument about whether this was
17 appropriate or half crazy, but I don't believe it
18 has a mental state, and there's no -- I don't
19 recall either one of us submitting a mental state
20 in the Charge. I don't think we agreed to all the
21 terminology, even as a form issue, but I don't
22 believe it has the mental state.

23 THE COURT: Okay.

24 MR. HALE: So, with that, I don't believe
25 there would be any way, even setting aside the

1 Item No. 4B could be met by one of three ways, and
2 so we'll never know and so they can't argue that,
3 that I don't believe that there's mental state
4 because all you're doing to use the good faith
5 would be to establish the 4B1, but it's not
6 necessarily a finding that they acted in bad
7 faith. It's just a relationship may have arose
8 because of the good faith and fair dealing between
9 the parties, but that doesn't mean it was
10 necessarily violated with a particular
11 unauthorized disclosure.

12 So, I think there's really two big
13 disconnects. You're right, and you also raised
14 the unclean hands and clean hands was a defense,
15 was an equitable defense to a Quantum merit (sic)
16 there which I don't believe could even arguably
17 support this. That's an affirmative finding of
18 bad faith or willful misconduct with regard to
19 this issue.

20 All right. Then we come to the Dorado
21 Judgment, the \$400,000 plus the attorneys' fees
22 and interest and that type of deal.

23 THE COURT: Come back, though, to me, and
24 help me understand a little more detail about what
25 your unrecovered State Court fees are. At least

1 what I think I understand is --

2 MR. HAIL: It would be -- a couple broad
3 categories. One is the biggest one certainly
4 being -- it would be fees incurred on causes of
5 action for which recovery could not be had under
6 our breach of contract. It would be nonbreach of
7 contract theories, and you know, defensive --
8 defense of affirmative claims being sought by
9 Dorado.

10 Now, as you know, sometimes there's a
11 little bit of an overlap. I'm taking a deposition
12 of Mr. Schmidt, I'm asking a breach of contract,
13 I'm also trying to find some information on --

14 THE COURT: The issue I just --

15 MR. HAIL: I don't think you have to
16 segregate that out. You're drafting a 40-page
17 Motion for Summary Judgment, 10 pages on breach of
18 contract, 30s on defending something. Did I think
19 you've done others. Say, no, you do need to make
20 some effort in that regard.

21 So, the first -- the biggest tronch of
22 that would be those two aspects, fees spent on
23 pursuing causes of action upon which fees could
24 not be recovered under 38.01 and defended against
25 Dorado claims to the extent it would not overlap

1 with our breach of contract theory.

2 The second broad category, and as
3 Mr. Roberson, you know, had referenced, there are
4 other law firms at issue. There were throughout
5 the course of this proceeding, although actually
6 from the very beginning with the Temporary
7 Restraining Order and Temporary Injunction and
8 throughout the course of the proceeding there were
9 concerns of securities issues, and you know, if we
10 ultimately get into that, we'll show you a whole
11 lot more detail, but there was legitimate reasons
12 for concerns of securities issues, and you know,
13 even before Panola and after the Department of
14 Justice came along.

15 Other securities lawyers, for example,
16 were looking into those issues, advising our
17 clients as to what their rights and obligations
18 were in those types of deals, and obviously,
19 that's something that could not be recovered.

20 So, in other words, really, all of it is
21 either me and my firm doing what we're doing or
22 some outside attorneys providing a particular area
23 of expertise or insight into things that are
24 directly to breach of contract issue for which we
25 sought recovery.

1 THE COURT: But they were in connection
2 with the State Court trial?

3 MR. HAIL: Oh, yes, they were all in
4 connection with the State Court trial.

5 THE COURT: And how much of the 730 --
6 how much of Delta (sic) between 734 and 275 are
7 fees you affirmatively sought from the Jury that
8 were not awarded to you?

9 MR. HAIL: I'd have to. We had that in
10 the Summary Judgment record. If I recall
11 correctly, I believe it was 100, 100,000.

12 THE COURT: And where is that in the
13 Summary Judgment?

14 MR. HAIL: That is attached to our
15 Response. I could find that real quickly.

16 THE COURT: All right.

17 MR. HAIL: 375. I'm looking at Page 124,
18 125. After segregating out the amount of time
19 incurred solely on unrecoverable claims, it's my
20 opinion that a reasonable and necessary attorneys'
21 fees incurred by Defendants in prosecution of the
22 claims, (can't hear what he's saying, he's away
23 from the microphone, probably at counsel table
24 with his head down reading off the paper).

25 THE COURT: All right. So, 100,000 was

1 affirmatively sought that was not awarded by the
2 Jury, for whatever reason?

3 MR. HAIL: Yes.

4 THE COURT: What is the basis upon which
5 I can give you that which the Jury didn't give
6 you?

7 MR. HAIL: You can't. We'll withdraw
8 that hundred.

9 THE COURT: Okay.

10 MR. HAIL: As I was -- literally, as I
11 mentioned about 30 minutes ago when I brought up
12 that Delta, that dawned on me, and I want to go
13 back and check that but I don't think that would
14 be appropriate.

15 THE COURT: All right. So, --

16 MR. HAIL: That may be in a sense a
17 Rooker-Feldman issue or something. That may be
18 questioning or asking you to modify the State
19 Court Judgment. We're not asking you to do that.

20 THE COURT: All right.

21 MR. HAIL: But we're not asking you to do
22 that right now.

23 THE COURT: All right. So, 734,862.72
24 minus 375, so what's left, if my math is correct,
25 is 359,862.72, and that is -- that amount are

1 fees that were incurred on the prosecution of
2 claims against Dorado for which attorney fees are
3 not recoverable under applicable nonbankruptcy law
4 under State law and fees of other firms with whom
5 you consulted and for whose fees you could not
6 seek to recover them under applicable state law.

7 MR. HAIL: Yes, and No. 3, and defense of
8 certain claims brought by Dorado for which didn't
9 overlap appropriately enough with the breach of
10 contract claim that we didn't seek fees for that.

11 THE COURT: Got it.

12 MR. HAIL: I think that broadly picks it
13 up.

14 THE COURT: All right. I'm with you.

15 MR. HAIL: Okay. So now, I think we can
16 talk a little bit about the State Court Judgment.
17 We've already kind of touched base on this issue a
18 little bit with regard to the indemnification
19 language and notice provision, that type of deal,
20 so I don't think we need to revisit that anymore.

21 Let's talk a little bit about a couple of
22 the defensive, just broad defensive issues that
23 counsel has raised and give our take on that.

24 First of all, with regard to Rooker-
25 Feldman which Mr. Roberson brought up near the end

1 of his argument, and the Court obviously is
2 extremely familiar with that, I'm sure that Your
3 Honor is extremely with the Exxon case talking
4 about the limitations placed on it and perhaps how
5 it had been viewed a little bit too broadly.

6 We are not, and maybe it's clearer now,
7 and maybe this issue is mooted. We are not
8 attempting to modify the State Court Judgment,
9 we're not claiming that -- we claim for purposes
10 of appeal that we believe the Court errored
11 respectfully on a couple of issues, but that's not
12 something that you're going to be touching or
13 dealing with in any way, shape or form, and so, I
14 said maybe with the clarifications that have been
15 raised, that's not an issue anymore.

16 Is it an issue? If it's not an issue, I
17 can move on. If it is an issue, I can talk about
18 it a little bit more.

19 THE COURT: Well, let's -- let me just
20 say kind of where it think we are on that. What I
21 understand you now to be asserting is that you are
22 seeking a claim allowed here to essentially
23 indemnify you, to reimburse you for the Judgment
24 that was entered against the Impact Claimants by
25 the State Court?